

I N D E X

Witnesses:

<u>Direct</u>	<u>Cross</u>	Re- <u>direct</u>	Re- <u>cross</u>	By <u>Examiner</u>
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None.

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Number

E X H I B I T S
For Identification

In Evidence

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1 JUDGE HAYNES: Pursuant to the direction of the
2 Illinois Commerce Commission, I now call
3 Docket 10-0330. This is the complaint of
4 Mannan Abdul versus Cbeyond Communications,
5 complaint as to billing or charges in Chicago,
6 Illinois.

7 May I have the appearances for the
8 records, please.

9 Your name and address.

10 MR. MANNAN ABDUL: Excuse me?

11 JUDGE HAYNES: Your name and address, please.

12 MR. MANNAN ABDUL: Yeah, my name is Mannan
13 Abdul. And address, 4740 Peterson Avenue, Chicago,
14 Illinois.

15 And this is not my name. It is my
16 company name. It is called Design Consulting
17 Engineers and we wrote the same way. I don't know
18 how this got on my name.

19 JUDGE HAYNES: But the account was held by your
20 company; not you?

21 MR. MANNAN ABDUL: Huh?

22 JUDGE HAYNES: The account with Cbeyond was in

1 your company's name?

2 MR. MANNAN ABDUL: It was with my company name;

3 not my name.

4 JUDGE HAYNES: Okay. And what was the company

5 name again, Design --

6 MR. MANNAN ABDUL: Design Consulting Engineers.

7 JUDGE HAYNES: Okay. Okay.

8 And for Cbeyond?

9 MR. DOVER: Good afternoon, your Honor.

10 Michael Dover, an attorney with the law

11 firm of Kelley, Drye and Warren, LLP, 333 West

12 Wacker, 26th floor, Chicago, Illinois 6060- --

13 60606, representing Cbeyond Communications, LLC.

14 JUDGE HAYNES: Okay. Last time this case was

15 up, the parties had decided to go to mediation.

16 And I'm going, based on the motion filed by Cbeyond

17 that the mediation didn't work out.

18 Mr. Abdul?

19 MR. MANNAN ABDUL: Yes.

20 JUDGE HAYNES: Did you -- have you received a

21 copy of the motion to dismiss?

22 MR. MANNAN ABDUL: Yes.

1 JUDGE HAYNES: Okay.

2 MR. MANNAN ABDUL: Yeah. Your Honor, I mean,
3 that said that I'm not -- it didn't -- we did
4 cooperate with Mr. Atkin of Cbeyond back and forth.
5 He offer us \$3,000 for settlement. That without
6 the equipment. And we told them we can pay half of
7 that, 15,000 (sic), two month -- two month of
8 bills.

9 And then we didn't heard from him. I
10 have that -- his e-mail and all my e-mail
11 correspondence on all this thing. And then Cbeyond
12 took their equipment from my office.

13 And at that hearing, we also mention
14 over here that we cannot afford, because every time
15 our contract was \$620, a bill is coming about four
16 times, 2,000, 2,100, something like that. So this
17 is why I cannot continue.

18 We inform them we'll disconnect. And we
19 got the service Comcast, and still I'm getting
20 billed for same service \$500, your Honor. \$500,
21 same service, same things.

22 JUDGE HAYNES: But -- so you're no longer with

1 Cbeyond?

2 MR. MANNAN ABDUL: No.

3 JUDGE HAYNES: Okay. So have you paid all of

4 the bills that you are sent?

5 MR. MANNAN ABDUL: Yes, I paid. I paid up to

6 three month.

7 JUDGE HAYNES: The bills from Cbeyond?

8 MR. MANNAN ABDUL: Yes.

9 JUDGE HAYNES: And then you quit paying?

10 MR. MANNAN ABDUL: Then this month, I'm going on

11 all these things.

12 JUDGE HAYNES: Uh-huh.

13 MR. MANNAN ABDUL: And then I'm going and

14 then -- (unintelligible) and then in two month, we

15 didn't pay.

16 JUDGE HAYNES: Okay. And so -- okay.

17 MR. DOVER: Your Honor?

18 JUDGE HAYNES: Uh-huh.

19 MR. DOVER: Mr. Abdul has referenced some

20 e-mails. I'm not aware of those e-mails. Could

21 you -- do you have a copy of them?

22 MR. MANNAN ABDUL: Yes. Yes.

1 MR. DOVER: And were they from before or after
2 the order of mediation?

3 MR. MANNAN ABDUL: There are so many e-mail
4 here. So which one you want? That is --

5 MR. DOVER: And while he's looking for that, I
6 think the thrust of our motion, your Honor, is that
7 Mr. Abdul is no longer a customer of Cbeyond and
8 has since ported his number. And as this bill is
9 disputed, it's no longer appropriate in this forum.

10 MR. MANNAN ABDUL: Yeah, I have all the e-mails,
11 and he's even also -- here, he's saying that he can
12 settle with the \$3,000, and we saying that we can
13 settle the two month of past due, which is close to
14 \$1500. And that is --

15 MR. DOVER: I apologize, your Honor. Just --

16 JUDGE HAYNES: Sure. Go ahead.

17 MR. DOVER: Your Honor, I apologize. I wasn't
18 aware of these -- these e-mails, and I'll need to
19 go back to my client to confer with regard to this
20 communication.

21 Would it be possible to enter and
22 continue this motion to dismiss until I further

1 confer with my client?

2 JUDGE HAYNES: Let -- if I get the -- your
3 motion is -- what you're saying is that mediation
4 fell apart and so, therefore, it should be
5 dismissed?

6 MR. DOVER: Yes, that's the first reason. That
7 was the first of the two reasons.

8 The second in Paragraph 3 talks about we
9 just in passing mentioned that Mr. Abdul has
10 terminated his service and ported his number to
11 another telecommunications provider. He's not a
12 current customer of Cbeyond, and so -- and strike
13 the "and so." He's not a current customer of
14 Cbeyond.

15 But in light of these e-mails that I was
16 not previously aware of, I think it would be
17 appropriate for me to go back to my client and
18 discuss them with them. However, I don't want to
19 delay this proceeding, but would like to get
20 information from my client with regard to these
21 specific e-mails and then come back before your
22 Honor.

1 JUDGE HAYNES: Mr. Abdul, did you --

2 MR. MANNAN ABDUL: Yes, ma'am.

3 JUDGE HAYNES: Well, let me say this:

4 I think that as -- from what I see on
5 this motion to dismiss, that I'm certainly not
6 prepared to grant it at this point. And that --
7 but I -- I think that would be more appropriate to
8 go ahead and move forward at this point.

9 And I'm not understanding why, for
10 purposes of this complaint, it would make a
11 difference if he was no longer a customer, and
12 maybe I'm missing something.

13 MR. MANNAN ABDUL: Yes.

14 JUDGE HAYNES: Go ahead.

15 MR. MANNAN ABDUL: Excuse me. That -- we
16 already mentioned, your Honor, in our -- this is, I
17 think, third time that even the bill coming, I
18 cannot afford at all. And they send the letters
19 and all these things.

20 And at that time, also our last hearing,
21 Mr. Atkins also agreed, okay, I can help you to
22 transaction (sic) from our company to other

1 company. We are kind of expensive, something like
2 that.

3 So then we go through all this thing and
4 we -- then we dismiss from here and then just told
5 us that you two people can negotiate. And then he
6 come up with that \$3,000. And after that \$3,000,
7 that \$3,000 not including the equipment. Now,
8 equipment she already have. That equipment, I
9 don't know, 500 or a thousand dollars. At that
10 time, we propose \$1500.

11 And then we got the one bill about
12 cancelation fee about \$150. And when we didn't
13 come up with all these things, then we got the
14 final cancellation fee about \$10,000.

15 So is there any regulation from the
16 state how much a company can charge for
17 cancellation or something? Like they charge --
18 they send me a bill about \$10,000 for cancellation?

19 JUDGE HAYNES: Well, I can't answer your
20 question off the top of my head. And I'm not even
21 sure that we would have jurisdiction over all of
22 the services you're getting from the company or

1 were getting from the company.

2 And if I understand you correctly, it's
3 not so much that you want money -- they sent you a
4 bill that you don't want to pay; is that --

5 MR. MANNAN ABDUL: No, no, no. They send --
6 they send the -- our two-month of unpaid invoice
7 plus final cancellation of another 10,000.

8 So now, that is also Mr. Atkin at that
9 time mention to that hearing that -- \$14,000, but I
10 can settle for \$3,000. And we were bargaining that
11 \$3,000 is still too much for us. And back and
12 forth e-mail, we give. And then after that, we got
13 that bill with \$10,000.

14 So this is now where it is at right now.
15 So these -- I mean, same service, same thing,
16 Comcast can provide \$500. How come this company is
17 like that? I mean, it's got to be some kind of
18 regulation here.

19 JUDGE HAYNES: But you entered a contract with
20 this company, correct?

21 MR. MANNAN ABDUL: Well, I enter a contract.
22 That is -- this is -- we've been -- talked with

1 that lady salesperson. She was in our office say
2 one time, and now electronics media, we leave on
3 her e-mail that I confirm her that no matter what,
4 our bill should not be more than \$620. And she
5 confirm with e-mail, yes, it's going to be \$620 per
6 month. And that e-mail, we have already.

7 And then she says she told me that it's
8 going to be too much paperwork. So just sign some
9 of the places. Then I will -- even if you don't
10 have any -- in the contract, I will fax all this
11 contract.

12 So this is their contract, all the fine
13 print and all these things.

14 JUDGE HAYNES: Okay.

15 MR. DOVER: I apologize, your Honor.

16 JUDGE HAYNES: Hm-hmm.

17 MR. DOVER: I just want to make sure I
18 understand.

19 Is -- is Mr. Abdul saying that he wishes
20 to continue in mediation and he's willing to
21 participate in mediation but for our response, or
22 is -- are you saying something else?

1 MR. MANNAN ABDUL: Yeah, I'm still continuing to
2 mediation, that I am telling that they offer \$3,000
3 and it is too much for me. Now they already took
4 the equipment. And if they can deduct equipment
5 money and all of that, that I'm willing to pay.

6 JUDGE HAYNES: Okay. I think that from what I
7 hear, that maybe you would still be willing to talk
8 and Cbeyond probably is as well. And, clearly,
9 nobody's ready to go to an actual hearing at this
10 point.

11 I don't think that I can grant this
12 motion to dismiss as it's written. I think that
13 what -- and let me know if you don't agree. That,
14 at this point, let's give it a continuance of a
15 month and that'll give people an opportunity to
16 discuss it -- or six weeks, something. You can
17 talk to each other. And we'll make that an actual
18 hearing, evidentiary hearing.

19 And if you don't settle or there's no
20 new motions, then we can go ahead with the hearing
21 on that date.

22 MR. MANNAN ABDUL: And with your permission,

1 your Honor, if Cbeyond attorney can talk to
2 Mr. Atkin and -- he offered \$3,000; and after that,
3 they already took my equipment. So part of the
4 equipment money, that need to be deduct from that.
5 So I'm willing to pay that amount close to \$2,000.

6 MR. DOVER: I can take that back to my client
7 and discuss it with him.

8 Your Honor, may we have a second?

9 JUDGE HAYNES: Sure.

10 (Pause.)

11 MR. DOVER: Your Honor, I think your proposal --
12 Cbeyond's amenable to your proposal. However, we
13 would -- we would also request -- respectfully
14 request that before the evidentiary hearing in six
15 weeks, your Honor participate in a mediation, a
16 settlement mediation, to allow the parties to
17 informally present evidence and participate in a
18 settlement discussion.

19 And if that's not successful, then go on
20 to the evidentiary hearing.

21 JUDGE HAYNES: Well, I can't do the mediation
22 and the evidentiary hearing. We've already gone

1 that route and it -- nothing came of it.

2 Are you saying that you wouldn't want to
3 go ahead and continue talking outside of this
4 forum?

5 MR. DOVER: No, we're certainly amenable to
6 talking outside the forum. We were suggesting
7 another route to help the parties come to a
8 settlement.

9 And I understand your Honor's
10 comments -- and I can withdraw my request --
11 Cbeyond is amenable to the evidentiary hearing in
12 six weeks.

13 JUDGE HAYNES: Yeah, I'm just reluctant to get
14 another administrative law judge involved because,
15 unfortunately, the one that did it prior -- do you
16 remember Eve Moran? She's retired. So she can't
17 do it again.

18 And so then we'd have to get another
19 one. And it didn't -- it didn't result in
20 mediation, and so I'm not sure if that's the best
21 route to go.

22 So can parties continue to discuss

1 amongst yourselves after this? And if you want to,
2 you can stay in the room, if you want to call your
3 client or see if you can work something out.

4 MR. DOVER: Your Honor, could we have an actual
5 date, though, for the hearing?

6 JUDGE HAYNES: Oh, yeah.

7 MR. DOVER: Okay.

8 JUDGE HAYNES: Yeah. I'm looking at my
9 calendar. And especially because -- yeah, if we
10 don't have an actual date, then it might never
11 happen. Might take too long.

12 So you said six weeks rather than four.

13 MR. DOVER: Four to six weeks is fine with
14 Cbeyond.

15 JUDGE HAYNES: Mr. Abdul?

16 MR. MANNAN ABDUL: Yeah, it's fine.

17 JUDGE HAYNES: Okay.

18 MR. MANNAN ABDUL: But -- okay.

19 JUDGE HAYNES: Did you have a question or was --

20 MR. MANNAN ABDUL: No. I mean, that hearing, do
21 you think that actually -- are you saying that that
22 mediation not working -- I mean, at that time,

1 different people every time coming.

2 So to do the mediation, you are not
3 party to give any decision? This is the thing
4 happening in the -- day, too --

5 JUDGE HAYNES: Right.

6 MR. MANNAN ABDUL: Then second hearing, there
7 was other people from Cbeyond. He offered this
8 3,000. And now third hearing --

9 MR. DOVER: I apologize. I'm not privy to the
10 e-mails that you showed me. I think you showed me
11 one e-mail -- one or two e-mails after the
12 mediation hearing.

13 MR. MANNAN ABDUL: Okay.

14 MR. DOVER: I -- I know that you've been in
15 discussions with Gene Watkins prior to that. You
16 do show one or two e-mails after the mediation
17 hearing. I think -- I hope I'm misunderstanding.

18 We're certainly willing to settle.
19 You've indicated that Cbeyond has offered a
20 settlement and it's my understanding that the
21 parties have not been able to come to an agreement
22 as of yet.

1 However, I think that Cbeyond is
2 amenable to continuing the settlement discussions
3 based on your representation that you're open to
4 settlement. And so I think that Cbeyond's position
5 is that they're being flexible and that they want
6 to continue settlement negotiations.

7 The specific one or two e-mails I was
8 not aware of, but I -- really, I don't think it
9 matters in the grand scheme of things.

10 I think that we have presented people
11 who are -- who have full authority to settle the
12 case to you. You've been in direct discussions
13 with them. So I think it's unfair to say that.

14 But I do think that we can continue
15 forward in settlement negotiations. And if they
16 don't -- they didn't go forward, Cbeyond agrees
17 with your Honor's request for an evidentiary
18 hearing.

19 JUDGE HAYNES: Did -- you were in the middle
20 of -- did you want to continue or --

21 MR. MANNAN ABDUL: Yeah, I agree to that. The
22 same sentiment here. And then no other evidence,

1 we present. So that's fine, you know.

2 JUDGE HAYNES: Okay.

3 MR. MANNAN ABDUL: Okay.

4 JUDGE HAYNES: So we all agree that we're going
5 to -- parties are going to continue having
6 discussions.

7 MR. MANNAN ABDUL: So now one thing not clear.
8 Now, there are so many parties, who they
9 should talk to -- Cbeyond talk with me or how it
10 can happen?

11 MR. DOVER: We are the law firm that represents
12 Cbeyond Communications. And you've also been
13 working with Gene Watkins, who is senior counsel at
14 Cbeyond Communications.

15 MR. MANNAN ABDUL: Okay.

16 MR. DOVER: So either counsel for Cbeyond or
17 Cbeyond will reach out to you.
18 If you don't respond to us, we'll try to
19 reach out to you again. If you don't respond to
20 us, I'm not sure how we --

21 MR. MANNAN ABDUL: No, that's -- I'm asking how
22 we can respond. So I show you the evidence at that

1 time. He offer \$3,000. If you pull the equipment.
2 So I'm telling you front of judge that I can go
3 \$2,000.

4 MR. DOVER: Yeah. See, and the problem is I
5 can't verify the numbers that you're saying.

6 MR. MANNAN ABDUL: Okay.

7 MR. DOVER: And so that's why --

8 JUDGE HAYNES: And so what I'm proposing here is
9 that you continue either talking to Mr. Dover? I'm
10 sorry.

11 MR. DOVER: Yes.

12 JUDGE HAYNES: Or -- before you leave today,
13 let's make sure Mr. Abdul knows who he should talk
14 to and have a phone number and e-mail to go ahead.

15 And before you come back -- we're going
16 to pick a date today. Before you come back, you're
17 going to have discussions with an attorney for
18 Cbeyond and see if you can work something out. And
19 if you can't, everybody's going to come in on some
20 week -- some day in November. We'll pick a date in
21 a minute. And at that time, you will present all
22 your evidence regarding this matter. And if you

1 have witnesses or any paper.

2 MR. MANNAN ABDUL: Yes -- yes.

3 JUDGE HAYNES: They will do the same thing at
4 that time.

5 MR. MANNAN ABDUL: Okay.

6 MR. DOVER: Your Honor, in the event that we do
7 come to settlement before that, is there
8 some mediation (inaudible) --

9 JUDGE HAYNES: And then nobody would have to
10 come. If you settle, then you're all done. Nobody
11 has to come back again and you can just -- I mean
12 if you settle the day before, you can call me and
13 we can cancel it. It's easy to cancel. And, yes,
14 then motions to dismiss would have to be filed,
15 but...

16 So let's pick a date. What about the
17 week of November 8th?

18 MR. MANNAN ABDUL: November 8 a holiday?

19 JUDGE HAYNES: It's Monday. 8th, 9th or 10th is
20 good for me of November.

21 MR. MANNAN ABDUL: 9th is Tuesday, right?

22 MR. DOVER: Yes.

1 MR. MANNAN ABDUL: That's fine.

2 JUDGE HAYNES: Tuesday the --

3 MR. DOVER: Tuesday the 9th is --

4 JUDGE HAYNES: The 9th. Okay.

5 Would the morning be better?

6 MR. DOVER: I think so.

7 JUDGE HAYNES: Okay. How about at 10:00 o'clock

8 on November 9th?

9 MR. MANNAN ABDUL: That's fine.

10 JUDGE HAYNES: Okay. And so if I don't hear

11 from you on November -- then I will see you on

12 November 9th. And bring all your paperwork, any

13 evidence you might have and any witnesses and we

14 will go from there.

15 Any questions?

16 MR. MANNAN ABDUL: You have all the e-mail and

17 these things?

18 MR. DOVER: Yes. Thank you, your Honor.

19 JUDGE HAYNES: Okay. Thank you.

20 Any questions, Mr. Abdul?

21 MR. MANNAN ABDUL: No. I only how -- what --

22 (unintelligible) here, they kind of corporation.

1 The legal department is one side, billing
2 department is other side. What's going on here in
3 court and all this thing that billing people don't
4 know these things. They might by this time throw
5 out this account to the collection agency.

6 JUDGE HAYNES: Okay. And so you just want to
7 make sure you know who to talk to?

8 MR. MANNAN ABDUL: Yeah. Yeah.

9 JUDGE HAYNES: Okay.

10 MR. MANNAN ABDUL: Contact, because we already
11 got this thing. That this is that automatic
12 generated bill that you have to pay by this month
13 or something like that, September 23.

14 MR. DOVER: Your Honor, just so I can say it on
15 the record so that you're aware, our client --
16 we're a law firm, Kelley, Drye and Warren. Our
17 client is Cbeyond. Gene Watkins is the primary
18 person to contact. He is senior counsel at Cbeyond
19 Communications for our client. So he is the
20 primary person to contact for settlement
21 discussions and negotiations.

22 You can certainly feel free to cc me or

1 any of other attorneys that are representing him,
2 but he's our client and he is the senior counsel at
3 our -- at Cbeyond.

4 MR. MANNAN ABDUL: Okay. So is Mr. Gene Atkin,
5 I need to contact or he need to --

6 MR. DOVER: Yeah, I think we're getting down to
7 specifics. I think if we both contact each other,
8 that would be fantastic.

9 MR. MANNAN ABDUL: Okay.

10 MR. DOVER: And we will ask Gene to contact you.
11 And if you want to contact him, you know, feel free
12 to.

13 JUDGE HAYNES: Okay. If there's nothing
14 further, then we are continued till November 9th at
15 10:00 a.m.

16 MR. DOVER: Thank you, your Honor.

17 JUDGE HAYNES: Thank you.

18 (Whereupon, said hearing was
19 continued to November 9th,
20 2010, at 10:00 a.m.)

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